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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No.                      466 of                      1986  
T.A. No.

DATE OF DECISION 13-3-87

Shri Shiv Parshad                      Petitioner

Shri G.D. Gupta                      Advocate for the Petitioner(s)

Versus

General Manager, Northern Railway                      Respondent  
and others

Shri K.N.R. Pillai                      Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Kaushal Kumar, Member (A)

The Hon'ble Mr. G. Sreedharan Nair, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
- ✓ 2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

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*17.2.1987*  
(G. Sreedharan Nair)  
Member (J)

*K. Kaushal*  
(Kaushal Kumar)  
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

D.A.No.466 of 1986.

13-3-1987.

Shri Shiv Parshad

...  
vs.

Applicant.

General Manager, Northern  
Railway and others

...

Respondents.

For applicant:

... Shri G.D.Gupta, counsel.

For respondents:

... Shri K.N.R.Pillai, counsel.

Coram:

The Hon'ble Mr.Kaushal Kumar, Member (A)

The Hon'ble Mr.G.Sreedharan Nair, Member (J)

(The Judgment of the Tribunal delivered by  
The Hon'ble Mr.G.Sreedharan Nair, Member(J)

The applicant who was initially appointed as Gateman in the Northern Railway on 5th July, 1950, was working as permanent Way Inspector Grade I with effect from 1-1-1984. He was informed by letter dated 11-3-1986 that he is retiring from Railway service from 30-6-1986. On 20-5-1986, the General Secretary of the Railway Mazdoor Union gave a representation on behalf of the applicant to the Chief Personnel Officer for correction of his date of birth in his service records. It was stated therein that while the date of birth of the applicant recorded in his service sheet is 1-7-1928, the actual date of birth is 8-7-1933. The photo copy of the Scholar's Register and Transfer Certificate Form was also produced to evidence that the correct date of birth is 8-7-1933. On 10-6-1986, the applicant himself gave a representation before the General Manager, Northern Railway, requesting for alteration of his date of birth in the service sheet. Thereafter, on 14-6-1986 a notice under section 80 of the Code of Civil Procedure was also issued. He has

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filed this application on 26-6-1986 before this Tribunal on the averment that no reply has been received either to the representation or to the notice.

2. It is stated in the application that at the time of the appointment of the applicant, he was not asked to give his date of birth. When the Railways issued a Circular in March 1977 authorising the Chief Personnel Officer to order alteration in the date of birth the applicant checked up his date of birth in the Service Records and it was only then that he came to know that it was entered therein as 1-7-1928. It is alleged that immediately the applicant submitted an application on 15-1-1978 for correction of his date of birth pointing out that the correct date of birth is 8-7-1933. Annexure 'B' is stated to be a copy of the said application. According to the applicant, he did not receive any reply and hence he continued to press his demand, but later he presumed that his date of birth has been corrected. It is pleaded that the action of the respondents in issuing the letter dated 11-3-1986 announcing the retirement of the applicant from 30-6-1986 is arbitrary and illegal.

3. The Divisional Personnel Officer, Northern Railway, has filed a reply on behalf of the respondents. It is contended that according to the Rules, at the time of entering Railway service the candidate is to declare his date of birth and on its basis it is entered in the Record of Service in his own hand-writing in case of literate staff. The applicant was literate and he declared his date of birth and signed the record as well. Throughout his service of 36 years, he had never represented for alteration of his date of

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birth; nor did he produce the School Certificate now relied upon. The averment in the application that on 15-1-1978 a representation was given by the applicant for alteration of date of birth is denied. No representation was ever made prior to the letter dated 25-8-1986 addressed by the Secretary of the Union. If the date of birth of the applicant is 8-7-1933 he would have been under-aged and ineligible for appointment on the date of his entry into service, which means that he secured the appointment by making a false declaration of his age.

4. The issue that falls for determination is whether the action of the respondents in retiring the applicant from Railway service on 30-6-1986 is arbitrary and illegal.

5. The applicant was initially appointed as Gateman in the Northern Railway on the 5th of July 1950. As a result of the subsequent promotions earned by him, with effect from 1-1-1984 he was working as permanent Way Inspector Grade I. Even on his own showing, he has studied up to the IX Class and is not an illiterate. According to Sub-rule (1) of Rule 145 of the Indian Railway Establishment Code, Volume I, every person, on entering Railway service shall declare his date of birth which shall not differ from any declaration, express or implied, for any public purpose before entering Railway service.

It has been specifically pointed out in the reply filed on behalf of the respondents that in accordance with this Rule, the applicant declared his date of birth at the time of his entry into service and that he has also signed the records. A photo copy of his Service Card has been produced by the respondents along with the reply. It is Annexure 'B.1'. It is seen from

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the original application that the applicant signs in English. In the Service Card there is his signature, as well as his left hand thumb impression. The signature of the applicant is seen to have been duly attested as well. His date of birth is entered therein as 1-7-1928, both in figures as well as in letters. It is admitted by the applicant in the rejoinder filed by him that he was asked to sign the Service Records, but he signed the same without seeing the entries, which statement cannot be taken on its face value.

6. It is in evidence that when the Rules were proposed to be amended so as to make it obligatory that request for alteration of date of birth should be made before the completion of the probation period or of three years of service whichever is earlier, to alleviate the hardship that may be caused to the Railway servants on account of the same, an opportunity was given by the Railway Board to all its employees enabling them to make representations if any against their recorded date of birth, up to 31-7-1973. This was by the letter of the Railway Board dated 4-8-1972, copy of which is at Annexure R-2(a). It is to be noted that wide publicity was directed to be given to the orders contained in the said letter as the employees were not to get another opportunity for alteration of their recorded date of birth. Admittedly, the applicant has not made any representation in response to the same.

7. The version of the applicant is that in March 1977, the Railways issued a Circular authorising the Chief Personnel Officer to order alteration in the date of birth

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of an employee, copy of which is Annexure 'A', and that it was on coming to know of the said Circular that the applicant checked up his date of birth in the Service Records when he found out that it has been wrongly entered. It is significant to note that the Circular at Annexure 'A' essentially deals with Railway servants who have metriculated from Calcutta and Patna Universities and whose dates of birth have been recorded as the first day of the month on the basis of their metriculation certificate indicating their age in terms of years and months only excluding days. It is not a Circular in the nature of the one that was issued in the year 1972 enabling all Railway employees for making representation regarding alteration of date of birth. Hence the version of the applicant that ~~he~~ set the ball in motion as a result of the Circular at Annexure 'A' is not worthy of credence. That apart, the allegation of the applicant that on 15-1-1978, he presented an application for correction of his date of birth, copy of which is stated to be Annexure 'B', has been categorically denied in the reply of the respondents. The copy of yet another representation on the same lines is produced by the applicant at Annexure B-1, though no specific reference to the same is made in the application. The receipt of this is also disputed by the respondents. The applicant has not been able to establish by any acceptable material that actually the originals of Annexure 'B' and Annexure 'B-1' representations were sent. There is the important circumstance that if the applicant has actually sent these representations he would not have refrained from pursuing action on their basis till the receipt of the impugned letter informing him that he is to retire from service

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on 30-6-1986. The receipt of the representation dated 20-5-1986 from the Secretary of the Railway Mazdoor Union is admitted by the respondents. They also admit that the applicant himself gave a representation on 10-6-1986.

8. It is clear from what is stated above, that after joining service under the Railways on 5th July 1950, furnishing his date of birth as 1-7-1928, affixing his signature in the service card in token of acknowledging the entries therein, it was only after serving more than 35 years, about a month prior to the due date of retirement, that the applicant has come forward with a case of wrong entry regarding date of birth in the service records, and a request for alteration of the same. It is also to be noticed that going by the date of birth alleged by the applicant at present, he would not have even attained majority at the time when he joined the Railway service. He was appointed to one of the responsible posts among the Class IV staff, namely the post of Gateman. It is in this background that the reliance placed by counsel of the applicant on Annexure 'C' photo copy of the Scholar's Register and Transfer Certificate Form has to be assessed. It was submitted by counsel that the entry therein relating to date of birth as 8-7-1933 has to be taken as conclusive evidence on the question of date of birth of the applicant, and in view of the same the respondents are bound to retain the applicant in service beyond 30-6-1986. At the outset it has to be pointed out that the respondents have clearly asserted in their reply that the applicant had never

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produced this certificate before them. As such, they cannot be faulted for having retired the applicant acting upon his date of birth as entered in the service records. Be that as it may, what is the evidentiary value of the certificate? An entry in any public or other official book, register or record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty is a relevant fact in view of Section 35 of the Indian Evidence Act. This ~~principle~~ is based on the circumstance that as regards public documents entries therein are made by officers authorised for the purpose and in discharge of public duty cast on them. It is on this principle that an entry in the School Admission Register with regard to the age of the pupil becomes admissible in evidence when the age of the pupil is in question. From the mere fact that such an entry is admissible in evidence it does not follow that it will clinch the issue, or that it is conclusive. The reason is not far to fetch. The entry regarding date of birth of the pupil is entered in the School Register at the time of admission of the pupil on the basis of the information furnished by the person who accompanies the pupil. It may not be that in all cases <sup>as is</sup> one of the parents who does so. Even in a case where one of the parents actually puts the pupil in the school, on account of the illiteracy of such person, the date of birth declared by him may not be correct. If the information regarding date of birth of the pupil is furnished with respect to some other records, say for instance, the extract from the Register

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of Births, then it is the entry in that register which has a greater probative value. Here, what has been relied upon is not even an entry in the school admission register as such, but an entry in the transfer certificate form issued to the pupil while he was expelled from the school. It may be that the entry regarding date of birth is made in this certificate with reference to that in the admission register maintained in the school. But this certificate and the entry made therein do not stand on a par with the admission register as such and the entry made therein.

9. Counsel of the applicant placed strong reliance on the decision of <sup>a</sup> the Bench of this Tribunal in Champat Singh vs. Union of India (1986 Administrative Tribunal Cases 75).

Counsel invited our attention to the direction given in the judgment to correct the date of birth in the ~~xxx~~ service records on the basis of the date of birth entered in the school leaving certificate. On the facts of that case, <sup>we are</sup> ~~who~~ in agreement with the directions that was issued. However, it is of no avail to the applicant, for the facts and circumstances are entirely different here. That was a case where within two years of the employee entering the service, the employer himself wanted the employee to produce documentary proof of age, when the original of the school leaving certificate was produced by the employee; but despite the same, the correction in the service record was not made.

10. Counsel of the respondents brought to our notice the decision of a Bench of this Tribunal in M. Asokan vs. The General Manager & Ors. (A.T.R. 1986 (2) C.A.T. 142) wherein it was held that a school certificate obtained from a private school cannot be taken as a substantive evidence of date of birth. It is not

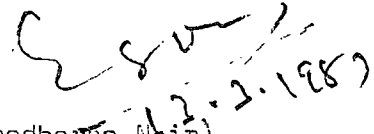
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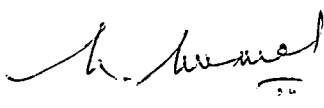
disputed that the certificate at Annexure 'C' was issued by a private institution. In S.K.Sen Gupta vs. Union of India (A.T.R. 1986.C-A.T-177) another Bench of this Tribunal has held that matriculation certificate as to date of birth is ordinarily accepted because it is somewhat an authentic document, but when that authenticity has been destroyed by the applicant by his own action and conduct, in that event <sup>the</sup> Tribunal can refuse to take note of it. The necessity to take into account the entire circumstances into consideration before placing reliance <sup>on</sup> the entry in the school leaving certificate regarding date of birth is pointed out in yet another decision by a Bench of this Tribunal in Narayan Chandra Chaudhry vs. Union of India & Ors. (A.T.R. 1986 C.A.T. 139).

of this case

11. The circumstances have been adverted to earlier and in view of the same, we have no hesitation to hold that merely by placing reliance on the entry relating to date of birth in the transfer certificate, copy of which is at Annexure 'C', it cannot be concluded that the date of birth of the applicant entered in his service record is wrong, and a declaration granted that his actual date of birth is as claimed in the application. We also hold that the action of the respondents in retiring the applicant on the basis of the entry in the service record cannot be said to be arbitrary or illegal.

12. The application is dismissed.

  
(G. Sreedharan Nair)  
Member (J)  
13-3-87

  
(Kaushal Kumar)  
Member (A)  
13-3-87.